

REMARKS

This responds to the Office Action mailed on March 16, 2010.

Claims 21, 33, and 41 are amended, no claims are canceled, and no claims are added; as a result, claims 21-45 remain pending in this application.

Amended Claims

Applicants have amended claims 21, 33, and 41 to resolve the rejection of claims 21-45 as being directed to non-statutory subject matter under 35 U.S.C. §101. For example, claim 21 has been amended to tie various method operations to “one or more processors.” Additionally, claim 33 has been amended to specifically recite a computer with one or more processors as part of the network-based marketplace facility. Finally, claim 41 has been amended to more particularly point out and distinctly claim the nature of the computer-readable medium as being a non-transitory storage medium. Applicants respectfully submit that no new matter has been introduced by these amendments. Accordingly, Applicants respectfully request entry of the amendments and reconsideration of the claims in light of the remainder of this response.

§ 101 Rejection of the Claims

Claims 21-45 were rejected under 35 U.S.C. § 101 as being directed towards non-statutory subject matter under the current interpretation of 35 U.S.C. §101. Applicants have amended independent claims 21, 33, and 41 to obviate this rejection.

Regarding claim 21, Applicants have amended the claim to recite, *inter alia*, “receiving, using one or more processors...” and “communicating, using the one or more processors...” Applicants respectfully submit that independent claim 21 as currently amended recites statutory subject matter since the recited method is specifically tied to a processor, which is considered as “[a] particular practical application of a judicial exception [that] is eligible.” See *Interim Examination Instructions for Evaluating Subject Matter Eligibility Under 35 U.S.C. §101* (August 25, 2009) at 6 (see also slide no. 5). As a result, amended claim 8 is patent-eligible under 35 U.S.C. § 101 because it is at least tied to a particular machine or apparatus and therefore satisfies the *Bilski* test. See *In re Bilski* 545 F.3d 943 (Fed. Cir. 2009). Withdrawal of the rejection under 35 U.S.C. § 101 is thus respectfully requested. Further, since claims 22-32

depend from claim 21, they too are patent eligible for at least the same reasons as independent claim 21. Accordingly, Applicants respectfully submit that claims 21-32 are in condition for allowance.

Regarding claim 33, Applicants have amended the claim to recite, *inter alia*, “the network-based marketplace including a computer with one or more processors.” While Applicants believe the previously recited network-based marketplace facility was statutory subject matter, in order to progress prosecution Applicants have positively recited a computer with one or more processors as part of the network-based marketplace facility. As such, claim 33 recites a “particular machine” that is central to the claimed subject matter. *See In re Bilski*, 545 F.3d at 954. Withdrawal of the rejection under 35 U.S.C. § 101 is thus respectfully requested. Further, since claims 34-40 depend from claim 33, they too are patent eligible for at least the same reasons as independent claim 33. Accordingly, Applicants respectfully submit that claims 33-40 are in condition for allowance.

Finally, regarding claim 41, Applicants have amended the claim to recite, *inter alia*, “a non-transitory computer-readable storage medium.” According to recent instructions issued by the USPTO, “a claim drawn to such a computer readable medium ... may be amended to narrow the claim to cover only statutory embodiments to avoid a rejection under 35 U.S.C. § 101 by adding the limitation ‘non-transitory’ to the claim.” USPTO Notice, “Subject Matter Eligibility of Computer Readable Media,” issued January 26, 2010. The USPTO has instructed that, “Such an amendment would typically not raise the issue of new matter.” *Id.* Applicants therefore request withdrawal of the rejection under 35 U.S.C. § 101 based on the amendments to claim 41. Further, since claims 42-45 depend from claim 41, they too are patent eligible for at least the same reasons as claim 41. Accordingly, Applicants respectfully submit that claims 41-45 are in condition for allowance.

CONCLUSION

Applicants respectfully submit that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicants' representative at (612) 373-6904 to facilitate prosecution of this application.

If necessary, please charge any additional fees or deficiencies, or credit any overpayments to Deposit Account No. 19-0743.

Respectfully submitted,

SCHWEGMAN, LUNDBERG & WOESSNER, P.A.
P.O. Box 2938
Minneapolis, MN 55402--0938
(612) 373-6904

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By /Gregory M. Stark/
Gregory M. Stark
Reg. No. 62,731

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 11th day of June, 2010.

Chris Bartl
Name

/C. Bartl/
Signature